THE HON'BLE SRI JUSTICE C.V. RAMULU

+ W.P.Nos.26242 of 2006 and 9908 of 2007

W.P.No.26242 of 2006

%Dated 07-9-2007

Between:
S. Udaya Bhasker Reddy & others … Petitioners
and
Tirumala Tirupathi Devasthanams,
Administrative Building, K.T.Road,
Tirupathi, rep. by its Executive
Officer and others … Respondents

!Counsel for the petitioner : Ms. N.Usha Kiran

^Counsel for Respondents: Mr. A.K. Jayaprakash Rao
Mr. Karanam Ramesh

W.P.No.9908 of 2007

%Dated 07-9-2007

Between:
G. Jagan Mohan Acharya & others … Petitioners
and
Tirumala Tirupathi Devasthanams,
Administrative Building, K.T.Road,
Tirupathi, rep. by its Executive
Officer and others … Respondents

!Counsel for the petitioner : Dr. K. LakshmiNarasimha

^Counsel for Respondents: Mr. A.K. Jayaprakash Rao
Mr. Y.V. Ravi Prasad
Mr. Karanam Ramesh

<GIST:

> HEAD NOTE:

? Cases referred
1. AIR 1988 SC 2073
2. 1984 SC 1587

3. 2001(10) SCC 567
4. 1984(2) SCC 50
5. 1996(11) SCC 173

THE HON'BLE SRI JUSTICE C.V. RAMULU

Friday, 7th day of September,2007

W.P.Nos.26242 of 2006 and 9908 of 2007

W.P.No.26242 of 2006

Between:-

S. Udaya Bhasker Reddy & others … Petitioners

and

Tirumala Tirupathi Devasthanams,
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Officer and others … Respondents

THE HON'BLE SRI JUSTICE C.V. RAMULU

W.P.Nos.26242 of 2006 and 9908 of 2007

COMMON ORDER:

In these two Writ Petitions, common question of law and fact arise for consideration; therefore, they are being disposed of by this common Order.

The only question that arises for consideration in these Writ Petitions is whether U.D. Stenographers, on their conversion to the post of Senior Assistant, are entitled to reckon their seniority in the cadre of Senior Assistant from the date of their promotion/appointment as U.D. Stenographer or from the date of conversion as Senior Assistant ?

Petitioners are all promoted as Senior Assistants from the post of Junior Assistant directly, whereas, the unofficial respondents being U.D. Stenographers were converted as Senior Assistants after completion of 3 years of service in the cadre of U.D. Stenographer. Therefore, it is the contention of the petitioners that U.D. Stenographers, who have been converted as Senior Assistants, cannot claim seniority in the cadre of Senior Assistant from the date of their appointment/promotion in the cadre of U.D. Stenographer. Whereas, according to the unofficial respondents, conversion has no consequence whatsoever and it is not a promotion; as such, they are entitled to reckon their seniority in the cadre of Senior Assistant from

the date of their promotion/appointment as U.D. Stenographer and not from the date of conversion as contended by the petitioners. Learned counsel relied upon Rule 6 of Tirumala Tirupathi Devasthanams Service Rules, 1989, which reads as under:

> "**6. Probation:-** (1) Every person appointed to a category by direct recruitment shall on probation for a total period of two years on duty within a continuous period of 3 years and every person appointed to any category or grade by promotion or conversion shall be on probation for a total period of one year on duty within a continuous period of two years."

Further, Rule 9 deals with appointment and method of recruitment. Sub-Rules (i) and (ii) of Rule 9, which are relevant, read as under:

> "**9. Appointment and method of recruitment:-**
>
> (i) The method of recruitment for appointment, qualifications and age prescribed for various posts shall be as specified against each post in Annexure II to these Rules. Provided that……
>
> (ii) The service shall consist of the posts under various branches specified in Annexure I, to these Rules."

Learned counsel for the petitioners placing reliance on the above Rules contended that whether on conversion or on promotion a person is appointed as Senior Assistant, shall be, on probation, for a total period of one year on duty within a continuous period of 2 years. Therefore, unless and until on conversion of unofficial respondents from the post of U.D. Stenographer to that of Senior Assistant and completed one year period of probation on duty within a continuous period of 2 years, they are not entitled to reckon their seniority in the cadre of Senior Assistant with those who have completed probation in the cadre of Senior Assistant (regularly promoted to the said post).

However, learned counsel for the 1st respondent-Devasthanams stated that there are no separate Rules framed and the A.P. State and Subordinate Service Rules,1996 are applicable in this

regard. Rule 33 of the said Rules, which reads as under:

> "**33. Seniority:-** (a) The seniority of a person in a service, class, category or grade, shall unless he had been reduced to a lower rank as a punishment, be determined by the date of his first appointment to such service, class, category or grade:
>
> Provided that……
> (b)…….
> (c)……..
> (d) The transfer of a person from one class or category of a service to another class or category of the same service carrying the same pay or scale of pay shall not be treated as first appointment to the latter class or category for purpose of seniority and the seniority of a person so transferred shall be determined with reference to the date of his regular appointment in the class or category from which he was transferred. Where any difficulty arises in applying this sub-rule, seniority shall be determined by the Government, if they are the appointing authority and in other cases, the authority next higher to the appointing authority shall determine the seniority.
> (e)……"

also indicates that the seniority of a person in the cadre or class shall be considered only from the date of completion of probation in that particular cadre and not otherwise. Therefore, the unofficial respondents are entitled to seniority in the cadre of Senior Assistant from the date of their appointment to the post of U.D. Stenographer; in the result treating the unofficial respondents as seniors to that of the petitioners is valid and justified.

Learned counsel for the respondent-Devasthanams also stated that before conversion, the post of U.D. Stenographer cannot be treated as inferior post to that of Senior Assistant. Conversion is only a mechanism to bring the U.D. Stenographers to the mainstream of administration. The conversion is to be treated as transfer and it is not a promotion as per Rule 15(ii) of the A.P. Ministerial Service Rules,1998. Since there was some ambiguity, a clarification was issued on 17-1-1985 to show that conversion is nothing but transfer from one category to another and the unofficial respondents are

entitled to reckon their seniority from the date of their promotion to the post of U.D. Stenographer. The seniority issue between Senior Assistants and U.D. Stenographers is not of recent origin and the same has been in existence since long time. The integrated seniority list has been prepared in the year 2003 and objections were called for from all the aggrieved persons and on consideration of the same, the provisional seniority list was confirmed on 7-1-2003. In accordance with the integrated seniority list, promotions to the category of Superintendent were issued including the unofficial respondents. Rule 33(a) of A.P. State and Subordinate Service Rules says that the seniority of a person in service, class, category or grade, shall, unless he had been reduced to a lower rank as a punishment, be determined by the date of his first appointment to such service, class, category or grade. Rule 33(a) shall be read in conjunction with Rule 33(d), which explains the term of first appointment. Rule 33(d) says that transfer of a person from one class or category of a service to another category or class of same service carrying the same pay or scale of pay shall not be treated as first appointment to the latter class or category for the purpose of seniority and the seniority of a person so transferred shall be determined with reference to the date of his regular appointment in the class or category from which he was transferred. Government, through its Memo No.27222/Ser.VIII/2001-1, dated 30-11-2001 clarified that conversion from an equivalent post can be treated as an appointment by transfer. Apart from this, Rule 35 of A.P. State and Subordinate Service Rules specifies about the fixation of seniority in the case of transfer on request or on administrative grounds. Clause (a) of the said Rule says that the seniority of a member of a service, class or category, transferred from one unit of appointment to another unit of

appointment, on administrative grounds, shall be determined with reference to the date of seniority of such member in the farmer unit. It is stated that some of the petitioners were originally appointed as Typists and they were also converted as Lower Division Clerks on completion of the required service in the category of Typist and when an integrated seniority list of L.D.Cs and Typists was prepared, the service of some of the petitioners in the cadre of L.D.C. from the date of their initial appointment in the post of Typist was taken into consideration. Now, the petitioners having taken advantage of reckoning their service in the cadre of LDC from the date of their initial appointment as Typist, though they have been converted, cannot have any objection for the unofficial respondents claiming such a benefit.

Learned counsel appearing for the unofficial respondents have adopted the arguments advanced by the learned counsel for the 1st respondent-Devasthanams and also stated that the conversion/transfer from one category to the other category does not alter the seniority of a person. In the cases on hand, the unofficial respondents are entitled to reckon their seniority from the date of their first appointment/promotion as U.D. Stenographer, though for administrative convenience they were converted as Senior Assistants for enabling them to be considered for promotion to the post of Superintendent. Conversion cannot have any bearing on the seniority in the cadre of Senior Assistant. In fact, Senior Assistant and U.D. Stenographer are one and the same class or category of posts. Only for administrative purpose, U.D. Stenographers were converted as Senior Assistants.

I have given my earnest consideration to the respective submissions made by the learned counsel on either side and perused the impugned Orders and other material made available on record.

At the outset, it may be necessary to notice the method of

recruitment to the posts of Senior Assistant/Superintendent as per the old and new Rules:

S. No.	Old Rule (G.O.Ms.No.1350,dt.02.08.1978)	New Rule (G.O.Ms.No.1060,dt.24.10.1989)
1	U.D. Clerk By promotion from the cadre of L.D.C. including L.D.Typist, L.D.Stenographer -	Senior Assistant 1. By promotion from the cadre of Junior Assistant 2. By conversion of U.D. Stenographer.
2	Superintendent By promotion from the post of U.D. Clerk and U.D. Stenos	Superintendent By promotion from the cadre of Senior Assistant

The method of recruitment and qualifications prescribed in T.T.D. Service Rules,1989 (as per G.O.Ms.No.1060, dated 24-10-1989) are as under:

12.Superintendent	By Promotion	By promotion from the cadre of Senior Assistant. i) Must have put in 3 years of service as Senior Assistant. ii) Must have passed Accounts Test for Subordinate Officers Part-II (or) Executive Officers Test. iii) Must have passed the Endowments Department Tests Part I & II.

14.Senior Assistant	1) By promotion 2 . By conversion of U.D. Steno	B y promotion from the cadre of Junior Assistant. i) Must have put in three years of service as Junior Assistant. ii) Must have passed the Accounts Test for Subordinate Officers Part I. iii) Must have passed the Endowments Department Test Parts I and II. Must have put in three years of service as U.D. Steno.

From the above, it is seen that while amending the method of recruitment for promotion to the post of Superintendent as per 1989 Rules, it is prescribed that a U.D. Stenographer, unless and until he has put in 3 years of service, he is not entitled for conversion to the post of Senior Assistant. Thus, a U.D. Stenographer is not entitled for conversion as Senior Assistant automatically on his promotion/appointment as U.D. Stenographer. Therefore, a U.D. Stenographer, who has been converted to the post of Senior Assistant, after completion of 3 years of service in the cadre of U.D. Stenographer cannot be said to have entitled to reckon his seniority in the cadre of Senior Assistant from the date of his appointment/promotion to the post of U.D. Stenographer.

It appears, the minimum educational qualification required for being appointed to the post of L.D.C. was Graduation. Whereas, for appointment to the post of L.D. Stenographer, it was Intermediate + Pass in Shorthand Examination. The fact that the petitioners are all Graduates is not in dispute. Further, the L.D. Stenographers and U.D.

Stenographers are not directly on administrative side and, therefore, they lacked administrative skills and thus, 3 years period for the purpose of their conversion as Senior Assistant was made compulsory. Rule 15 of the A.P. Ministerial Service Rules,1998 reads as under:

> "**15. Seniority:--** (1) Service rendered in a post or group of posts bearing a distinct designation and included in a category as constituted by Rule (2), shall count for seniority in such category, post or group of posts irrespective of the Department or Office in which such service was rendered:
>
> Provided that—
>
> (i)……
>
> (ii) the seniority of a member of the service who is transferred on administrative grounds from one department or office or unit of appointment to another department or office or unit of appointment shall be fixed in the latter department or office or unit with reference to the date of his first appointment in the former department or office or unit;
>
> (iii)……
>
> (2) The seniority of a member of the service, who is appointed by conversion from the post of Special Category Stenographer to the post of Superintendent or from the post of Senior Stenographer or U.D. Typist to the post of Senior Assistant shall be fixed with reference to the date of his first appointment as Special Category Stenographer or Senior Stenographer or U.D. Typist, as the case may be."

It is the contention of the learned counsel for the respondents that seniority of a member of service, who transferred on administrative grounds from one Department or Office or Unit of appointment to another Department or Office or Unit shall be fixed in the latter Department or Office or Unit with reference to the date of his first appointment in the former Department or Office or unit. The second proviso to Rule 15(1) has no application insofar as the unofficial respondents are concerned. The unofficial respondents are neither transferred from one Department to another Department or one Office

to another Office or one unit to another unit. This is a case of conversion. Rule 15 (2) says that seniority of a member of service, who is appointed by conversion from the post of special category stenographer to the post of Superintendent or from the post of Senior Stenographer or U.D. Typist to the post of Senior Assistant shall be fixed with reference to the date of his first appointment as a special category Stenographer or Senior Stenographer or U.D. Typist, as the case may be.

Conversion/probation/seniority:

Learned counsel for the petitioners relied upon various judgments to drive at home that transfer cannot be equated to conversion and, therefore, even after conversion one has to be on probation as per Rule 6 of the T.T.D. Employees' Service Rules,1989 and as such, the seniority of a person shall be considered from the date of conversion and not from the date of first appointment as U.D. Stenographer.

Learned counsel for the respondents also relied upon a Circular/Clarification dated 17-1-1985 issued by the Government of Andhra Pradesh to show that conversion has to be treated as a transfer and conversion is nothing but transfer. Rule 6 of 1989 Rules contemplates that a person appointed to any category or grade by promotion or on conversion, shall be on probation for a total period of one year on duty within a continuous period of 2 years. When the learned counsel for the petitioners stated that the unofficial respondents were never put on probation and in fact, their seniority cannot be reckoned in the post of Senior Assistant, learned counsel for the 1st respondent stated that, of course, the question of putting the unofficial respondents on probation does not arise, since it was only a conversion and Rule 6 of 1989 Rules was never given effect to insofar

as putting the persons, who are converted from one category to another category, on probation as they were promoted to the same category or class. In fact, Rule 6 categorically indicates that even a person, who is converted/promoted, shall be put on probation. Learned counsel for the respondents also relied upon a judgment reported in **S.B. MATHUR v. HON'BLE CHIEF JUSTICE, DELHI HIGH COURT**[1] and drawn attention of the Court to paragraphs 8,11 and 14, which read as under:

> "8. The above provisions make it clear that certain posts were treated as equated posts under Schedule I and certain. posts were treated as equal status posts under Schedule II to the said Seniority Rules of 1971. It is clear that these provisions were made with a view to provide transferability among persons holding these posts and to provide for channels of promotion to certain categories of employees who did not enjoy a chance for promotion earlier with the result that there was stagnation and frustration in the categories concerned. It may be noticed here that the posts of Judgment writers, Personal Assistants to Judges and Private Secretaries to Judges have been treated as equated posts and the posts of Superintendents, Court Masters and Private Secretaries to Judges have been treated as equal status posts. Rule 5 of the Seniority Rules of 1971 set out by us earlier provides for a joint seniority list of confirmed employees in categories of equal status posts presumably with the same object as aforestated.
>
> 11. The first submission of Mr. Thakur, learned Counsel for the petitioners is that there is a violation of Article 14 of the Constitution in treating the posts of Superintendents, Court Masters or Readers and Private Secretaries to the Judges as equal status posts. It was urged by him that the sources of recruitment to these posts were not identical and so also the qualifications required for appointments to these posts. He also pointed out that the duties of the incumbents of these posts were different. It was submitted by him that in treating these posts as equal status posts unequals were treated equally and hence the rule of equality was violated. In appreciating this submission, it must be borne in mind that it is an accepted principle that where there is an employer who has a large number of employees in his service performing diverse duties, he must enjoy a certain measure of discretion in treating different categories of his employees as holding equal status posts or equated posts, as questions, of promotion or transfer of employees inter se

will necessarily arise for the purpose of maintaining the efficiency of the organisation. There is, therefore, nothing inherently wrong in an employer treating certain posts as equated posts or equal status posts provided that, in doing so, he exercises his discretion reasonably and does not violate the principles of equality enshrined in Articles 14 and 16 of the Constitution. It is also clear that for treating certain posts as equated posts or equal status posts, it is not necessary that the holders of these posts must perform completely the same functions or that the sources of recruitment to the posts must be the same nor is it essential that qualifications for appointments to the posts must be identical. All that is reasonably required is that there must not be such difference in the pay-scales or qualifications of the incumbents of the posts concerned or in their duties or responsibilities or regarding any other relevant factor that it would be unjust to treat the posts alike or, in other words, that posts having substantially higher pay-scales or status in service or carrying substantially heavier responsibilities and duties or otherwise distinctly superior are not equated with posts carrying much lower pay-scales or substantially lower responsibilities and duties or enjoying much lower status in service.

14. Apart from this, it must be observed that the challenge to the said posts being treated as equal status posts comes much too late to be entertained in the writ petition. These posts were treated as equal status posts under R. 2 read with the Schedules to the said Seniority Rules of 1971 and certain promotions have also been made under the said Rules. These Rules became effective in 1971 and it is much too late to seek to challenge them in 1979, long after the Rules have been given effect to. It may be mentioned that, although they did make representations, the petitioners chose to file the Writ Petition only as late as in 1979. In our view, the challenge to the Rules providing for the said, posts being treated as equated posts or equal status posts can be negatived on the ground of delay or laches apart from other considerations."

and submitted that the date of seniority of unofficial respondents shall be reckoned from the date of first appointment to the post of U.D. Stenographer. Learned counsel also drawn attention of the Court to another decision of the Supreme Court in **UNION OF INDIA v. H.R. PATANKAR**[2] and submitted that the respondent-Devasthanams can fill in the lacuna, if any, in the statutory rules by making an appropriate seniority rule.

Learned counsel for the 1st respondent raised an objection for making any interference with the matter by this Court on the ground that the petitioners have approached this Court with an unreasonable delay. In this regard, the learned counsel relied upon a Judgment of the Supreme Court reported in **M.BHEEMAIAH v. DEPUTY COMMISSIONER OF EXCISE**[3]. The upgradation of the appellants in the said case was delayed on account of administrative reasons in their district, while their counterparts in other district got upgradation earlier. Under those circumstances, in paragraph-8 of the said decision, it was observed that though it is possible to contend that the appellants therein are not at fault, the Court found that assigning the appellants therein any date anterior to the dates assigned to those in other districts is likely to affect the seniority of all the candidates in other district and candidates from the other districts have not been made parties before the Tribunal nor in the Apex Court. Therefore, the Supreme Court refused to interfere with the appeal.

In **S.B. MATHUR**'s case (1 supra), the Apex Court while dealing with Delhi High Court Staff (Seniority) Rules,1971 *vis à vis* Delhi High Court Establishment (Appointment and Conditions of Service) Rules,1972 held that even if duties and responsibilities attached to certain posts are not the same, they were not so materially different as to render it inequitable that these posts should be treated on the same footing for the purpose of promotion and transfer. In absence of the plea that the equating of the posts was prompted by *mala fides,* treating of the said posts as equal status posts cannot be said to be arbitrary. In the said case, certain posts were treated to be equal to some other posts for the purpose of considering for further promotion. The question that came up for consideration in the said case is

whether those posts could be equated for the purpose of considering for promotion and the question of *inter se* seniority did not come up for consideration. Thus, the said decision has no application to the facts of the present cases. In the cases on hand, the dispute is as to the placement when an integrated seniority list is prepared for the purpose of promotion to the higher post.

In **H.R. PATNAKAR**'s case (2 supra), the principle laid down is that even if there are no statutory rules in force for determining seniority in a service or even if there are statutory rules, but they are silent on any particular subject, it is competent to the Government by an executive order to make appropriate Seniority Rules or to fill in the lacuna in the statutory rules by making an appropriate seniority rule in regard to the subject on which the statutory rules are silent. This decision has also no relevance to the facts of this case, since the Tirumala Tirupathi Devasthanams Employees Service Rules,1989 and the A.P. State and Subordinate Service Rules contemplate as to the conditions for conversion of a U.D. Stenographer to that of a Senior Assistant and declaration of probation even on conversion and seniority.

Whereas, learned counsel for the petitioners relied upon the decisions of the Supreme Court in **BABAJI KONDAJI GARAD v. NASIK MERCHANTS COOP.BANK LTD.**[4] and **M.P. CHANDORIA v. STATE OF M.P.**[5]

In **BABJI KONDAJI GARDA**'s case (4 supra), it was held as under:

> "15……..The statutory provision has precedence and must be complied with. Further the opinion of the Deputy Registrar as expressed in his circular dated February 1, 1979 and his letter dated June 4, 1979 has no relevance because his lack of knowledge or misunderstanding of law as expressed in his opinion has no

relevance. The High Court relying upon the aforementioned two documents observed as under :

> "There is no inconsistency between S. 73-B and the bye-laws because even the Government has construed Section 73-B in such manner that even though the bye-laws are not amended and reserved seats remain unfilled by election the same can be filled up by co-option."

With respect, we find it difficult to subscribe to this untenable approach that a view of law or a legal provision expressed by a Government Officer can afford reliable basis or even guidance in the matter of construction of a legislature measure. It is the function of the Court to construe legislative measures and in reaching the correct meaning of a statutory provision, opinion of executive branch is hardly relevant. Nor can the Court abdicate in favour of such opinion."

This is a general proposition. But, in Rule 4 of T.T.D. Employees' Service Rules,1989, which governs the field, it is provided that the TTD employees are governed by certain Rules (enumerated in the Rule), which are made applicable to the Government employees. Rule 4(ix) says that any other executive instructions and Government Orders that are issued from time to time by the Government in respect of their employees, which are not inconsistent with the Act and Rules made thereunder, are also applicable to the employees of TTD. Therefore, it cannot be said that the instructions issued by the Government are not binding on the TTD. Governmental instructions are binding so long as they are not inconsistent with the Act and the Rules made by the TTD. But, Rule 15 of the A.P. Ministerial Service Rules,1998 is not applicable to these cases, since the Service Rules of respondent-Devasthanams do not contemplate applicability of those rules to the TTD employees.

M.P. CHANDORIA's case (5 supra) is cited to show that unless and until the probation is completed and confirmed, a member of the service is not entitled for reckoning of the service in the same cadre for

the purpose of seniority. In the said decision, it was held thus:

> "5……Until the probation is declared and he was confirmed in the post, he does not become a member of the service (sic) successful completion of the probation and pass of the prescribed tests or conditions precedent to declare the probation. So, mere passage of time one year does not entitle a probationer to be a member of the service. He remains to be on temporarily service. On declaration of probation, the appointing authority should confirm in a pending post available or to grant quasi-permanent status. As soon as the post is available, he should be confirmed. In view of the admitted position that he did not pass the test, the appointing authority considered that his seniority would be counted w.e.f. the date of his passing the test. Rule 12(a)(ii) clearly empowers the appointing authority to assign, in these circumstances, the seniority in lower level than the one assigned by the Public Service Commission. We do not find any illegality committed by the authorities in giving seniority from the date of his passing the test."

In the said case, of course, conversion *vis a vis* probation and seniority was not considered. Therefore, this judgment has no relevance to the facts of the present cases.

Rule 6 of TTD Employees' Service Rules,1989 contemplates that a person appointed to any category or grade by promotion or conversion shall be on probation for a total period of one year on duty within a continuous period of two years. As stated above, Rule 33(a) of the A.P. State and Subordinate Service Rules,1996 provides that the seniority of a person in a service, class, category or grade, shall be determined by the date of his first appointment to such service, class, category or grade, unless he had been reduced to a lower rank as a punishment. Rule 34 of the said Rules contemplates that where an integrated or common seniority list of a particular class, or category or grade in any service belonging to different units of appointment has to be prepared for the purpose of promotion etc., such an integrated or common seniority list shall be prepared with reference to the provision of sub-rule (a) of Rule 33, provided that the seniority list of the

persons *inter se* belonging to the same units shall not be disturbed. The Explanation to the said Rule states that the principle specified above shall be applicable even where a common integrated list is required to be prepared for categories in different services, classes or categories. But, it does not contemplate as to how the seniority is to be reckoned. It may be altogether different in a case where probation in case of conversion is not contemplated and just one post born in a class or category of posts is equated to that of any post for the purpose of promotion. This is not one such case.

Conclusions:

It is settled law that the seniority of an employee shall be reckoned from the date of declaration of probation. A conjoint reading of Rule 9 of TTD Employees' Service Rules and Rule 33(a) of the A.P. State and Subordinate Service Rules shows that the seniority of a U.D.Stenographer on conversion to the post of Senior Assistant shall be reckoned from the date of declaration of his probation in the cadre of Senior Assistant and not from the date of appointment/promotion to the cadre of U.D. Stenographer. Though, the learned counsel for the petitioners tried to invoke the doctrine of *casus omissus,* in this regard, there is no necessity of dealing with the same. Respondent-Devasthanam itself, in its counter filed in Writ Petition Nos.15609 and 15610 of 2004 stated as under:

> "….After the TTD Employees Service Rules,1989, which came into force with effect from 24-10-1989, separate seniority has to be maintained for these two categories i.e. Sr.Assts., and U.D.Stenographers w.e.f. 24-10-1989. The U.D.Stenographers after putting three years of service in the cadre of U.D. Stenographers become eligible for conversion as Sr.Asst., and seniority has to be fixed to them in the Sr.Asst cadre after conversion at an appropriate place. As per the present Service Rules issued in G.O.Ms.No.1060, dt.24-10-1989 the Sr.Assts., and U.D.Stenographers are separate category and the Sr.Asst cadre alone is the feeder cadre for the post of Superintendent. Further, in the new Service Rules, there is a

> provision for conversion of U.D.Stenographers as Senior Assistants only after having put in not less than three years of service in the post of U.D.Stenographer. As per Rule (6) of TTD Service Rules issued in G.O.Ms.No.1060, every person appointed to any category or grade by promotion or conversion shall be on a probation for a total period of one year on duty within a continuous period of two years. According to this provision, **the U.D. Stenographers after conversion as Senior Assistants shall start their probation afresh in the cadre of Senior Assistant from the date of their joining as Senior Assistants**." (emphasis supplied)

Apart from that, in the Circular dated 19-8-2004 issued by the 1st respondent-Devasthanam, it is stated as under:

> "As per Rule 33 of A.P. State and Subordinate Service Rules applicable to TTD, the seniority of the U.D.Stenographers, who are converted as Sr.Assts., is to be fixed in Senior Assistants cadre basing on the date of such conversion, but not from the date of their appointment in the cadre of U.D.Stenographers. The Devasthanams Law Officer, TTDs has opined that the contention of the U.D.Stenographers that they are eligible for promotion directly to the cadre of Superintendents is not correct."

In view of the above, the contention now urged by the learned counsel for the 1st respondent that since 1989 the *inter se* seniority of U.D.Stenographers and Senior Assistants is considered from the date of the appointment/promotion of U.D.Stenographers seems to be not correct. Any amount of explanation offered as to conversion either under the A.P. Ministerial Service Rules or any Circulars issued by the Government as to requiring declaration of probation and seniority as contemplated in Rule 33(a) of the A.P. State and Subordinate Service Rules, have no bearing in view of a specific provision being available in Rule 6 of TTD Employees' Service Rules.

For all the above reasons, the Writ Petitions are allowed and it is declared that the U.D.Stenographers are entitled to reckon their seniority in the post of Senior Assistant from the date of conversion as Senior Assistant and not from the date of their promotion/appointment

to the post of U.D.Stenographer, in the integrated seniority list of feeder channel categories for promotion to the post of Superintendent. This decision will have effect only in case of the parties to this Writ Petition. No order as to costs.

07-9-2007

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[1] AIR 1988 SC 2073

[2] 1984 SC 1587

[3] 2001(10) SCC 567

[4] 1984(2) SCC 50

[5] 1996(11) SCC 173